IN THE HIGH COURT OF JUDICATURE, AT JABALPUR

W.P. NO.3843/2000

PETITIONER

M.P. Karmchari Congress Brahcn Bilaspur Development Authority, a Registered Society under Registration No.25569. Office-Near Hanuman Mandir Gol Bazar, Bilaspur, through it's President Shri Suresh Tiwari, S/o. Late Nageswer Prasad Tiwari, aged about 35 years, Occupation-working as Time Keeper in the Bilaspur Development Authority, Bilaspur(MP)

2. Rejendra Awasthi, S/o. Ganesh Prasad Awasthi, aged about 34 years, Occupation-Clerk/Secretary M.P. Karkchari Congress, Branch Bilaspur, Bilaspur Development Authority, Bilaspur (MP).

Cr. Ca...

CLERK
O/o. Advocate Geral
M. P. JABALPUR.

2000

VERSUS

RESPONDENTS:

1. State of M.P. through it's Secretary, Deptt of Housing Environment Vallabh Bhawan, Bhopal

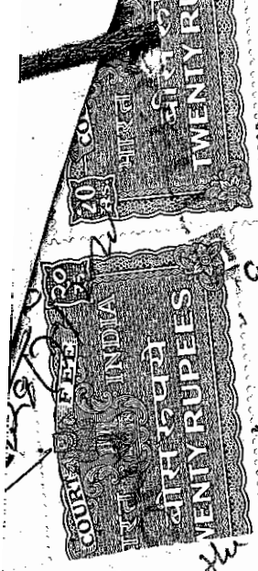
2. Bilaspur Development Authority, through its Chief Executive Officer, Vyapar Bihar, Ring Road, Bilaspur.

3. The Chief Executive Bilaspur Development Authority, Vyapar Bihar, Ring Road, Bilaspur (MP).

Surendra Kumar Khare
S.K. Khare
Oath Commissioner JBP.

years,
as Time Keeper ...
Bilaspur Development
Authority, Bilaspur(MP)

2. Rejendra Awasthi, S/o. Ganesh Prasad Awasthi, aged about 34 years, Occupation-Clerk/Secretary M.P. Karkchari Congress, Branch Bilaspur, Bilaspur Development Authority, Bilaspur (MP).



Cr. Ca...
CLERK
O/o. Advocate General
M. P. JABALPUR.

PETITION

Applied as per order dated - 19-7.2K
27.7.2K
Counsel for the petitioners

19. Murli Manohar S/o Shri Jwala Prasad, aged about 40 years R/o Lophandi Bilaspur.

20. Anil Gulhare S/o Late Shri Prabhulal Gulhare, aged about 30 years R/o Near Rajarana Mandir, Gondapara Bilaspur.

21. Santosh Pandey S/o Shri R.K.Pandey Aged about 36 years, R/o Vidhanagar, Bilaspur.

22. Ashok Kumar Rajput S/o Shri Hardant aged about 28 years R/o Vikas Nagar, Bilaspur.

23. Sarojini Rao S/o Late Shri L.A. Rao aged about 35 years, R/o Yadunandan Nagar, Bilaspur.

24. Siyaram Nirmalkar S/o Shri Bhagatram Nirmalkar aged about 28 years, H.No.109, Chingrajpara Bilaspur.

25. Alok Pandey S/o Late Shri V.P.Pandey aged about 35 years R/o Sarkunda Bilaspur.

26. Gajraj Honde S/o Shri Tangu Honde, aged about 38 yearsR/o Jarhabhata Bilaspur.

27. Hariram Banjara S/o Shri Kashichar Banjara aged about 35 years R/o. Near Bhola Mandir Ladhapara, Bilaspur.

28. Devendra Meshram S/o Shri Narayan Meshram, aged about 32 years R/o Dr. Ambedkar Nagar, Bilaspur.

29. Braj Mohan Uike S/o Shri Sitaram aged about 43 years, R/o Nagarpara Ambedkar Nagar Bilaspur.

30. Narendra Chitrakar S/o Shri Banjrang Chitrakar aged about 28 years R/o Purana Sarkunda, Bilaspur.

31. Ramesh Sa u S/o Late Shri Ramlal Sahu aged about 30 years R/o Shanti Nagar Tiphra Bilaspur.

32. Rajendra Singh Chouhan S/o Late Shri S.L.Chouhan aged about 27 years R/o Talapara Bilaspur.

33. Bhonduram S/o Shri Suritram aged about 35 years R/o Tikrapara Bilaspur.

(10)

4. The Commissioner, Revenue, Bilaspur Division cum Chairman Bilaspur Development Authority, Bilaspur.

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF CERTIORARI, MANDAMUS, DIRECTION/DIRECTIONS, ORDER/ORDERS

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.No.3843 of 2000

M.P.Karmachari Congress and Others

Versus

State of M.P. and Others.

Before: Hon'ble Justice Shri W.A.SHISHAK, CJ.

Present

Shri Manindra Shrivastava, learned counsel for the petitioner.

Shri Ranvir Singh, Government Advocate for the respondents No.1 and 4.

Shri M.D.Sharma, learned counsel for the respondents No.2 and 3.

O R D E R

1. Heard the learned counsel for the parties.

2. The writ petitioners who are 48 in all, are challenging the order of termination issued by the respondent No.3 on 10th May, 2000. It may be stated that the petitioners were employed on daily wage basis. They were engaged from different dates beginning from 1989 till about 1999. The services of the petitioners were terminated as it was decided by the Government that persons employed on daily wages who were appointed after 31st December, 1988 would be terminated. Various employees of the State approached the State Administrative Tribunal taking grievance against the order of termination. So also, the employees of various local bodies namely like Development Authority also approached Madhya Pradesh High Court in respect of the same order of termination. At this stage, it may be stated that respondent No.3 came into existence some time in

(Ctd..2)

1982-83 under the provisions of M.P.Nagar Tatha Gram Nivesh Adhiniyam, 1973.

3. It is contended that after Development Authority came into existence at Bilaspur, activities of the authority increased. Indeed need to employ more persons arose. Accordingly, the Development Authority requested the Government for sanction of posts of contingent and work charge employees to be employed by the Development Authority. It may also be stated that, in the matter of employment by the Development Authority sanction of posts is necessarily to be accorded by the State Government. A request for sanction of posts was made on 29.4.1988. It appears that the request was for 112 posts. It may be stated that the State Government sanctioned 51 posts. Thereafter, a further request was again made for 61 posts stating that the Development Authority needed more persons to be employed. However, such sanction was not made. As regards the further request for sanction of posts by Annexure P-3 and P-4 no response came ~~for~~ from the State Government.

4. It is contended by Shri Manindra Shrivastava that there is no financial burden as such for the employment to be given to the writ petitioners and others by the Development Authority inasmuch as the said Authority generates sufficient financial resources of it's own.

5. As stated above, on 27.11.1999 the State Government issued a notification that persons who were appointed after 31st December, 1988 be terminated. In compliance with the aforesaid termination notification, the Development Authority issued another order dated 18.1.2000. All those persons who were engaged on daily wage basis were terminated except those engaged in sanitary work and also those whose posts had been sanctioned and against which they had been allowed to continue.

(Ctd..3.)

6. Some writ petitions were filed by the aggrieved terminated employees before the High Court of M.P. at Jabalpur. These petitioners had also filed W.P.No. 511/2000 and the same was disposed of on 11.3.2000 in the light of the earlier writ petition No.842/2000 which has been disposed of by the same High Court on 9.3.2000. In order to appreciate the clear directions issued in the present case referred to as W.P.No.842/2000 which was disposed of on 9.3.2000, a copy of the said order has been annexed as Annexure P-16. Para 6 of the said order states:

> "During the course of hearing, yet another D.O. letter dated 8.3.2000 of the Principal Secretary, Government of M.P., Urban Administration and Development Department, was produced by which it has further been clarified that cases shall be scrutiniced in accordance with the orders dated 14.2.2000 and 26.2.2000 keeping in mind the need of the local bodies and the basic amenities required to be provided to the Public but subject to the ceiling of 65% on establishment charges and upto 75% in the case of Saphai Kamgars in Municipalities, Municipal Corporations and Nagar Panchayat. It has also been directed that these bodies shall accordingly forward proposals for creation of posts which shall be duly considered by the Government".

7. I may reiterate at this stage that requests for creation of posts/sanction of posts had been duly made by the Development Authority of Bilaspur to the State Government. After all aspects of the matter were considered, the High Court of M.P. disposed of the matter with certain directions in para 9 of the said order which is as follows:-

(Ctd...4..)

"In the light of the above willingness indicated by the petitioners to the course suggested by the State Government for consideration of individual employees, these petitions are disposed of with the direction that the Competent Authority or the Committee constituted in this behalf shall:

(1) consider the case of each petitioner entitled to such consideration in accordance with the order dated 14.2.2000 and dated 26.2.2000 as explained vide D.O. dated 8.3.2000 on the criteria contained therein for such scrutiny;

(2) take into consideration the representations received in this behalf from these employees or their representatives and the other material placed by them during such scrutiny before taking the decision;

(3) grant relaxation in age, if necessary, to the extent of the service rendered by the employee while considering the age-bar;

(4) give due weightage to the inter-se seniority as per length of service, other things being equal;

(5) make proposals for creation of posts as per the directives contained in the above orders of the Government subject to the limitations prescribed therein; and

(6) communicate the decision to each such employee."

8. It is further contended that when the matter was placed before the Competent Authority a copy of this direction was not available for consideration. This fact is reflected in para 5.16 of this writ petition that though a copy of order passed in W.P.No.511/2000 dated 14.3.2000 was available and also the order passed in W.P.No.1478/2000, unfortunately, the order passed in W.P.No.842/2000 was not attached to the representation filed before the Development Authority. It is therefore contended that before any consideration was made, the Bilaspur Development Authority ought to have obtained a copy of the order passed in W.P.No.842/2000. According to the petitioners, ~~infact,~~ Chief Executive Officer gave assurance to the petitioners that on

(251)

receipt of the aforesaid order due consideration shall be made and that the petitioners would also be given due notice. This however, did not take place.

9. It is contended by Shri Manindra Shrivastava that the Competent Authority did not comply with the directions issued by the High Court in the present case inasmuch as the petitioners were not given any opportunity of being heard.

10. As regards the need of the services of the writ petitioners or for that matter services of more employees required by the Development Authority, Shri Manindra Shrivastava has drawn my attention that although initially there were only three projects to be handled by the Bilaspur Development Authority, as of now there are as many as 23 projects which are mentioned in para 5.11 of the writ petition. It is therefore submitted that in view of tremendous increase in the works to be undertaken by the Bilaspur Development Authority, the need to employ more persons was highlighted and request was accordingly made to the State Government for sanction/ creation of posts.

11. Shri M.D.Sharma, learned Advocate appears for respondents No.2 and 3. I may state that Shri M.D. Sharma and Shri Ranvir Singh, learned Government Advocate who appears for respondents No.1 and 4 have similar submissions as far as the relevant rules applicable to the present case are concerned, concerning employment in the Bilaspur Development Authority. On careful perusal of Section 67 of M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 as well as Rules 4, 5 and 6(1) of the M.P.Special Area Authority (Chairman & Officers & Servants Recruitment and condition of Service) Rules 1976, I am of the view that applicationsof such rules or provisions of law are not directly an issue in the present case.

(Contd.6.)

12. Shri M.D.Sharma submits that infact respondents No. 2 and 3 have complied with the direction issued by the M.P. High Court inasmuch as due consideration has been made. Further, it is submitted that as Government issued the notification by which persons employed on daily wages basis engaged after 31st December, 1988 were to be terminated, the same was done by the Bilaspur Development Authority in compliance with the Government's order. According to Shri M.D.Sharma, there is no necessity of giving the persons a personal hearing inasmuch as they were given one month notice before the order of termination became made and also because of fact that no representation was made ~~as such~~.

13. As against this submission Shri Manindra Shrivastava submits that infact the orders passed by the High Court were also placed before the Competent Authority. Shri Manindra Shrivastava submits that there is no denial from the Bilaspur Development Authority that at the time of consideration copy of the order passed by the High Court in W.P.No.842/2000 passed on 9.3.2000 was not available. According to Shri Manindra Shrivastava no effective consideration could have been possible inasmuch as clear directions were given in the said Court order passed in W.P.No.842/2000.

14. Upon careful perusal of the impugned order of termination issued by the respondents No.2 and 3 it seems clear that order of termination was issued on the ground that there was no order of sanction issued by the State Government. However, there is no mention made that as of then there was no further need of services either of the petitioners or for that matter the services of any other persons. In may view, the requests for sanction made by the Bilaspur Development Authority makes it abundantly clear that except for want of sanction, the need of employing the writ petitioners and for that matter any other persons clearly existed then and

perhaps more now. Simply on technical ground that sanction was not accorded and therefore persons who were otherwise employed because they were needed, could not have been dispensed with. In my view, the need to employ is essential and not sanction for creation of posts which must come in course of time, of course, from the Competent State Authority. Assessment of the need of the employment is to be made and infact itwas made by the Bilaspur Development Authority. There is no change in this position and even otherwise, because of the fact that as of now, there are as many as 23 projects under the Bilaspur Development Authority, it cannot be said that need to continue services could not exist.

15. There is no clear statement from the State Government as to why sanction cannot be accorded. In my view, once the basis requiring employing more persons has been made available to the State Government, there would be no valid reason for the State Government to refuse to accord sanction. I am also further of the view that Bilaspur Development Authority is in a position to generate its own resources to maintain its employees. Hence, once Bilaspur Development Authority has made the request for sanction, I would consider that the State Government is under obligation to grant necessary sanction. Since request has not been withdrawn, the State Government should verify and consider the request of the Bilaspur Development Authority. The said request should now be considered by the successor State of Chhattisgarh.

16. In the result and in the premises aforesaid, this petition is allowed. The impugned orders of termination dated 10.5.2000 issued by the Bilaspur Development Authority are set aside.

Sd/-
Chief Justice
15.10.2001.

ss/-